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and OTTOMOTTO LLC

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 WAYMO LLC,

Case No. 3:17-cv-00939-WHA

20 Plaintiff,

**DECLARATION OF SYLVIA RIVERA  
IN SUPPORT OF DEFENDANTS UBER  
TECHNOLOGIES, INC.,  
OTTOMOTTO LLC, AND OTTO  
TRUCKING LLC'S SUR-REPLY TO  
PLAINTIFF WAYMO LLC'S MOTION  
FOR PRELIMINARY INJUNCTION**

21 v.

22 UBER TECHNOLOGIES, INC.,  
OTTOMOTTO LLC; OTTO TRUCKING LLC,

23 Defendants.

24 Date: May 3, 2017  
25 Time: 7:30 a.m.  
Ctrm: 8, 19th Floor  
26 Judge: The Honorable William Alsup

27 Trial Date: October 2, 2017

1 I, SYLVIA RIVERA, declare as follows:

2 1. I am a partner of the law firm of Morrison & Foerster LLP, counsel of record for  
 3 defendants Uber Technologies, Inc. (“Uber”) and Ottomotto LLC, and Otto Trucking LLC  
 4 (“Defendants”).<sup>1</sup> I am a member in good standing of the Bar of the State of California. I make  
 5 this declaration based on personal knowledge in support of Defendants’ Sur-Reply to Plaintiff  
 6 Waymo LLC’s Motion for Preliminary Injunction.

7 2. Defendants have worked diligently to comply with the expedited discovery  
 8 schedule in this action. In our extensive search for documents, we have consulted with a number  
 9 of Uber employees, including Anthony Levandowski, who have assisted us in locating responsive  
 10 documents. Our search for documents has included searches of Mr. Levandowski’s records at  
 11 Uber, including applying over 100 search terms (15 of which were provided by Waymo) to Mr.  
 12 Levandowski’s records. Defendants’ efforts are described more fully below.

13 **Defendants Searched Extensively for the Alleged 14,000 Files**

14 3. In our search for the alleged 14,000 files and anything derived from them, we  
 15 interviewed more than 85 Uber employees.

16 4. We retained Stroz Friedberg LLC to investigate forensically whether any  
 17 confidential material from Waymo exists on Uber’s network. Working closely with us and  
 18 employees at Uber, Stroz Friedberg collected data from emails and Google Drive, imaged almost  
 19 200 workstations, and collected data from LiDAR related servers. That massive collection effort  
 20 included custodial files for over 100 Uber employees and involved hundreds of terabytes of data.

21 5. The Declaration of Kevin Faulkner (Dkt. 175-1) and concurrently filed  
 22 Supplemental Declaration of Kevin Faulkner describe the forensic work Stroz Friedberg  
 23 performed on that data, including filename and MD5 hash value searching.

24 6. Stroz Friedberg also processed and applied search terms to the data so that  
 25 attorneys could review the documents that contain a search term hit and determine whether they

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26 27 28 <sup>1</sup> Goodwin Procter LLP filed a substitution of counsel on April 24 noting that it has  
 assumed the representation of Otto Trucking LLC, an entity that is not owned by Uber, but that  
 document has not yet been signed by the Court.

1 contain confidential Google material. We used more than 100 search terms, including 15 terms  
 2 added by Waymo pursuant to the Court's April 6, 2017 order.<sup>2</sup>

3       7.     In order to review the substantial volume of documents that "hit" on one of the  
 4 search terms, we assembled a team of more than 40 attorney reviewers. As of April 26, 2017,  
 5 attorneys have spent over 5,000 hours, including weekends, reviewing more than 300,000  
 6 documents for responsiveness to the Court's order of March 16, 2017.

7       8.     As a result of Stroz Friedberg's forensic searches and the manual review of  
 8 documents with search term "hits" performed by attorneys, Defendants have produced  
 9 approximately 9,000 documents from their files. With one exception, these documents were  
 10 produced because of filename and MD5 hash matches, and not because a reviewer concluded they  
 11 contained alleged trade secret information. Defendants produced only one email and a 2 page  
 12 attachment from their files that reviewers concluded potentially referenced Google trade secrets.  
 13 We asked Waymo to let us know if it believes the document refers to proprietary information and  
 14 did not get a response to that question. There is no reference to that document in Waymo's reply  
 15 papers. Defendants also obtained permission to have Stroz Friedberg search the personal Gmail  
 16 account for one Uber employee and produced two responsive documents from that account.

17       9.     Stroz Friedberg is still processing additional documents that hit on the search  
 18 terms. We will continue to have a large team of attorneys review the documents with search term  
 19 "hits," likely through next week, but possibly beyond due to the large volume of data, as  
 20 described in the Supplemental Declaration of Kevin Faulkner.

21       **Defendants Diligently Searched for and Produced Documents in Connection with**  
 22       **Waymo's Deposition Notices**

23       10.    In its March 16, 2017 order, the Court allowed the parties to take the deposition of  
 24 each declarant whose declaration was submitted in support of or opposition to the preliminary  
 25  
 26

27       2 The Court's April 6, 2017 order refers to Defendants' 120 search terms. However, our  
 28 search term list had just under 100 terms.

1 injunction motion. The Court permitted the parties to serve up to six “very narrowly drawn”  
 2 document requests with each deposition notice. (Dkt. 61.)

3       11. Deposition notices were due 120 hours before the scheduled start of the deposition,  
 4 with the associated document production being due 24 hours before the deposition. That meant  
 5 that in most instances, Defendants had only approximately 96 hours from the time they received  
 6 the deposition notice to contact the deponent and clients and set-up a time to discuss the  
 7 document requests, collect potentially responsive documents, review them for responsiveness and  
 8 privilege, and have them processed for production. Defendants did this for eleven depositions in  
 9 a 10-day period from April 9 through April 19.

10       12. More than 14 Morrison & Foerster and Boies, Schiller, Flexner lawyers  
 11 participated in the effort to identify, collect, review, and produce documents in response to  
 12 Waymo’s document requests served with their deposition notices within the narrow four day  
 13 window available for each deposition.

14       13. On April 20, 2017, the parties met with Special Master John Cooper and  
 15 discussed, among other things, Waymo’s objections to Defendants’ document production in  
 16 connection with the depositions. The parties reached a compromise on five document requests  
 17 Waymo served with its deposition notices, as reflected in Mr. Cooper’s email of the same date  
 18 which was attached as Exhibit 113 to the Declaration of Jordan R. Jaffe (Dkt. 248.) Defendants  
 19 agreed to search for and produce documents responsive to those requests.

20       14. In response to document request no. 4 from the deposition notice for Scott  
 21 Boehmke, Defendants had previously produced responsive documents from Mr. Boehmke’s files  
 22 in advance of his deposition. On April 20, Defendants agreed to search beyond Mr. Boehmke’s  
 23 files for documents regarding Mr. Levandowski’s LiDAR-related consulting work. Defendants  
 24 produced additional responsive documents on April 25 and April 27, including documents from  
 25 Anthony Levandowski’s files.

26       15. In response to document request no. 6 from the deposition notice for Asheem  
 27 Linaval, Defendants had previously produced responsive documents from Mr. Linaval’s files in  
 28 advance of his deposition including emails from Mr. Levandowski to Mr. Linaval. At the April

1 20 conference, Defendants agreed that Waymo could provide the names of two additional  
 2 custodians for whom Defendants would search for responsive documents. At 8:42 p.m. on  
 3 Sunday, April 23, Waymo identified Anthony Levandowski and Max Levandowski as the two  
 4 additional custodians. Defendants then searched for, reviewed, and produced responsive  
 5 documents on April 27, including documents from Anthony Levandowski's files.

6 16. At the April 20 conference, Defendants also agreed to search for additional  
 7 documents in response to three other document requests. As of the date of this filing, that search  
 8 is on-going. We have agreed to produce any additional responsive documents that we locate by  
 9 tomorrow morning.

10 **The 22 Priority Document Requests**

11 17. On April 14, 2017, Waymo sent Defendants a list of 22 document requests that  
 12 Waymo wanted Defendants to prioritize. A true and correct copy of Waymo's Amended  
 13 Document Requests to Help Determine Responsiveness in Conducting Search for  
 14 Misappropriated Documents is attached as Exhibit 1. Defendants worked diligently to search for,  
 15 identify, and produce responsive documents. By April 20, 2017, just six days later, Defendants  
 16 completed their production of documents in response to those 22 priority requests. Defendants  
 17 produced documents responsive to each of those requests, except for three requests for which no  
 18 responsive documents were identified after a diligent search.

19 18. Earlier this week, Waymo's counsel made additional requests for more technical  
 20 documentation regarding the Spider. We produced that additional documentation.

21 **Defendants Amended Their Privilege Logs**

22 19. Counsel for Defendants also spent over 500 hours reviewing and creating privilege  
 23 logs for communications related to the investigation performed by Stroz Friedberg LLC in  
 24 connection with Uber's acquisition of Ottomotto. Waymo raised numerous concerns with the  
 25 privilege logs and the parties conferred. In an effort to address Waymo's concerns, Defendants  
 26 amended their privilege logs and served the amended logs on April 27, 2017, and expect to serve  
 27 another set on April 28 with amendments to address Waymo's concerns. Defendants also agreed  
 28 to undertake the laborious task of re-reviewing emails on the logs to ensure that all senders and

1 recipients are accounted for within an email string. Attached as Exhibit 2 is a true and correct  
2 copy of my email of April 27, 2017, to Waymo's counsel at Quinn on this subject.

3 20. In total, Defendants have devoted over 6,000 attorney hours to searching for and  
4 reviewing documents in connection with Waymo's motion for preliminary injunction, including  
5 reviewing for the 14,000 allegedly misappropriated files, documents responsive to requests  
6 appended to deposition notices, documents responsive to Waymo's 22 priority requests served on  
7 April 14, 2017, and documents to be placed on a privilege log.

8 I declare under the penalty of perjury under the laws of the United States of America that  
9 the foregoing is true and correct. Executed this 28th day of April, 2017, in Los Angeles,  
10 California.

11 \_\_\_\_\_  
12 */s/ Sylvia Rivera*  
13 Sylvia Rivera  
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#### ATTESTATION OF E-FILED SIGNATURE

22 I, Arturo J. González, am the ECF User whose ID and password are being used to file this  
23 Declaration. In compliance with General Order 45, X.B., I hereby attest that Esther Kim Chang  
24 has concurred in this filing.

25 Dated: April 28, 2017

26 \_\_\_\_\_  
27 */s/ Arturo J. González*  
28 Arturo J. González